

SENATE BILL NO. 321

INTRODUCED BY C. WILLIAMS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PENALTIES FOR VIOLATIONS OF LAWS PROTECTING THE RIGHTS OF VOTERS; EXPANDING ACTIONS THAT QUALIFY AS DECEPTIVE PRACTICES RELATED TO ELECTIONS; AMENDING SECTIONS 13-13-301, 13-35-106, 13-35-207, AND 20-20-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 13-13-301, MCA, is amended to read:

"13-13-301. Challenges. (1) An elector's right to vote may be challenged ~~at any time~~ by any registered elector by the challenger filling out and signing an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote; or

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter.

(3) When a challenge has been made under this section:

(a) ~~prior to the close of registration under 13-2-301~~ 60 days or more before an election, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or

(b) ~~after the close of registration~~ less than 60 days before an election or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.

(4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector as soon as possible of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. If the challenge is made more than 5 days before an election, "as soon as possible", as used in this subsection (4)(b), means no later than 5 days after the challenge.

(5) (a) An election administrator may assess the costs of determining the sufficiency of the challenge against the person who filed the challenge if the election administrator determines that the challenge was not made in good faith.

(b) A person assessed costs under this subsection (5) may appeal the assessment in district court.

~~(5)(6)~~ The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors."

Section 2. Section 13-35-106, MCA, is amended to read:

"13-35-106. Ineligibility to hold office because of conviction. In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of this title, except ~~13-35-207(9)~~ 13-35-207(1)(i), is ineligible to be a candidate for any public office in the state of Montana until ~~his~~ the person's final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of this title, except ~~13-35-207(9)~~ 13-35-207(1)(i), is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana until ~~his~~ the person's final discharge from state supervision;

(3) if an elected official or a candidate is adjudicated to have violated any provision of this title, except ~~13-35-207(9)~~ 13-35-207(1)(i), ~~he shall~~ the elected official or candidate must be removed from nomination or office, ~~as the case may be~~, even though ~~he~~ the person was regularly nominated or elected."

Section 3. Section 13-35-207, MCA, is amended to read:

"13-35-207. Deceptive election practices -- remedies. (1) A person is guilty of false swearing,

unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

~~(1)(a)~~ (a) falsely represents the person's name or other information required upon the person's registry card and causes registration with the card;

~~(2)(b)~~ (b) signs a registry card knowingly witnessing any false or misleading statement;

~~(3)(c)~~ (c) knowingly causes a false statement, certificate, or return of any kind to be signed;

~~(4)(d)~~ (d) falsely makes a declaration or certificate of nomination;

~~(5)(e)~~ (e) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;

~~(6)(f)~~ (f) forges or falsely makes the official endorsement of a ballot;

~~(7)(g)~~ (g) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;

~~(8)(h)~~ (h) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;

~~(9)(i)~~ (i) signs a name other than the person's own to a petition, signs more than once for the same ballot issue, or signs a petition while not being a qualified elector of the state; ~~or~~

~~(10)(j)~~ (j) makes a false oath or affidavit where an oath or affidavit is required by law; or

(k) undertakes an action designed to affect an elector's or potential elector's right to vote without reasonable proof of whether the elector or potential elector fails to meet the qualification requirements of 13-1-111.

(2) Any elector has standing to challenge, in court, the showing of proof required for undertaking an action described in subsection (1)(k). In addition to any other penalties provided by law, a person who undertakes an action described in subsection (1)(k) shall pay:

(a) attorney fees and legal costs if the person is a defendant in a civil action brought in district court in which the plaintiff prevails; and

(b) the costs to a governmental entity of carrying out its duties under Title 13 if the governmental entity was required to take administrative action under the law before a court action was resolved."

Section 4. Section 20-20-303, MCA, is amended to read:

"20-20-303. Elector challenges. (1) An elector may challenge the qualifications of another elector under the provisions of 13-13-301(1). Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in 13-13-301(2). The challenge must be determined in the same manner, using the same oath as provided in Title 13, chapter 13, part 3.

(2) Any person who has been challenged under any of the provisions of this section and who swears or affirms falsely before any school election judge is guilty of false swearing and is punishable as provided in 45-7-202.

(3) (a) The school trustees or the county election administrator, if the election administrator is conducting the election, may assess the costs of determining the sufficiency of the challenge against the person who filed the challenge if the trustees or election administrator determines that the challenge was not made in good faith.

(b) A person assessed costs under this subsection (3) may appeal the assessment in district court."

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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